IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4403 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.C. - Appellant(s)
Versus
IYATAN AHMADMIYA MALEK & 1 - Defendant(s)

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Appearance :
MR HS MUNSHAW for Appellant(s) : 1,
MR NIRAL R MEHTA for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/09/2007

ORAL JUDGMENT

1. The short facts of the case are that on

4.3.1996, when the injured Iyatan Ahmadmiya Malek after completing his work in Glass Factory was going on bicycle on Kadi-Kalol Highway road, at that time when S.T.Bus bearing registration No. GJ 1 Z 2710, being driver in a rash and negligent manner dashed with the bicycle and Iyatan Ahmadmiya Malek sustained injuries on the head, nose etc. The claim petition was filed being MACP No.1174/2007 for recovery of compensation of Rs.4 lacs before the Tribunal. The Tribunal after adjudication awarded the compensation of Rs.2 lacs with interest @ 7.5%. Under these circumstances the present appeal before this Court by the S.T.Corporation.

2. Heard learned advocate on behalf of Shri Munshaw for the appellant and Shri Mehta for the original claimant. Considered the Judgment and Award passed by the Tribunal. Considered the copy of the panchnama which was read over by Shri Singh during the course of hearing.

3. The learned counsel for the appellant first contended that the negligence held of the driver of the S.T.Bus by the Tribunal is erroneous. In his submission the injured person was not examined and the Tribunal on the basis of the evidence of the father of the injured and panchnama found that the driver of the S.T.Bus was negligent and, therefore, there is an error committed by the Tribunal.

4. The examination of the said contention shows

that the injured had sustained injuries. He was in mental unsound position. The claim petition was filed by the father and the mother. It deserves to be recorded that the injured remained unconscious for about 1 month and 22 days after sustaining the injuries and because of the fact that he was under mental unsound condition, on behalf of him the father being claimant has deposed. The panchnama is also considered by the Tribunal. The important circumstances are that the blood stains are found on the extreme left of the road, on the basis of which it can be said that the cycle was driven on the extreme left side of the road. Further there is no mark of brake on the road as per the panchnama and said aspect would show that the driver of the bus did not apply any brake nor any attempt was made to control the speed or to avoid the accident. Hence, if the Tribunal has found the driver of the S.T.Bus as negligent, such an approach on part of the Tribunal cannot be said as unjust and unreasonable.

5. The learned counsel for the appellant next contented that the quantum of compensation awarded by the Tribunal is as higher side and, therefore, the Tribunal has committed error.

6. The examination of the said contention shows that the discussion is on page 10 of the judgment. The income was of Rs.2,164/- based on the payslip and was even not opposed by the opponents. Further, as such the prospective income is also not taken into

consideration. Keeping in view the income based on the salary and the admitted disability of 25%, the Tribunal has calculated future loss of income. Further the Tribunal has considered the actual loss of income for 21 months since the deceased remained unconscious on account of the injury. Other expenses are for medical treatment, attendant charges, transportation, diet and Rs.20,000/- is awarded towards the pain, shock and sufferings. Such an approach on part of the Tribunal cannot be said as unjust and unreasonable, more particularly when serious injuries were sustained. The injured has remained unconscious for a long time and a long drawn treatment is undertaken coupled with the circumstances that even when the claim petition is filed and the deposition is recorded the injured has not been able to recover fully and he has remained under unsounded mental condition.

7. No other contention is raised.

8. In the result, the appeal is meritless and therefore, dismissed.

9. The amount if any deposited with this Court by the appellant shall be transmitted to the Tribunal. The amount if not deposited shall be deposited within eight weeks from today.

[JAYANT PATEL, J.]

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